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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 835 (JGK)

5 DAVID SCHWARTZ and
6 ROBERT RIMBERG,

7 Defendants.

8 January 6, 2016
9 5:00 p.m.

10 Before:

11 HON. JOHN G. KOELTL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 BY: ROBERT ALLEN

Assistant United States Attorney

16 SHER TREMONTE LLP

Attorneys for Defendant Schwartz

17 BY: MICHAEL TREMONTE

18 THERESA TRZASKOMA

19 MICHAEL BACHNER

Attorney for Defendant Rimberg

20
21 Also present: JOHN MOSCATO, Pretrial Services
22 ROBERT POTASH, FBI
23
24
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(Case called)

THE DEPUTY CLERK: All parties please state who they are for the record.

MR. ALLEN: Good afternoon, your Honor. Robert Allen for the government. I am joined at counsel table by Special Agent Robert Potash of the FBI and Pretrial Services Officer John Moscato.

MR. BACHNER: Good evening, your Honor. Michael Bachner on behalf of Robert Rimberg. Nice to be in front of you again.

THE COURT: Good to see you again. I note that your client is present.

MR. BACHNER: Yes, your Honor.

MR. TREMONTE: Good afternoon, your Honor. Michael Tremonte and Theresa Trzaskoma for Mr. Schwartz.

THE COURT: I note that Mr. Schwartz is present.

Mr. Allen, where are we?

MR. ALLEN: Your Honor, both the defendants were arrested on December 14. Mr. Rimberg was presented and arraigned in magistrate court on that date. Mr. Schwartz was presented on a 5(c)(3) in California, and so he stands to be arraigned on the indictment today.

THE COURT: Let me arraign Mr. Rimberg.

MR. ALLEN: It's Mr. Schwartz, I apologize, who needs to be arraigned.

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1 THE COURT: Thank you.

2 Are you David Schwartz?

3 DEFENDANT SCHWARTZ: Yes.

4 THE COURT: Are you being represented by Michael
5 Tremonte?

6 THE DEFENDANT: Yes.

7 THE COURT: Before I go on, is this Mr. Schwartz's
8 first appearance?

9 MR. ALLEN: Yes, your Honor, in New York.

10 THE COURT: But he appeared in --

11 MR. ALLEN: Mr. Schwartz was arrested in California
12 and was presented on a 5(c)(3) in California.

13 THE COURT: So he was warned of his rights in
14 California?

15 MR. ALLEN: Yes, your Honor, I believe so.

16 DEFENDANT SCHWARTZ: Yes.

17 THE COURT: If in doubt, I am perfectly happy to
18 provide the warnings to Mr. Schwartz.

19 Mr. Schwartz, you have the right to remain silent.
20 You need not make any statement. Even if you have already made
21 any statements to the authorities, you need not make any
22 additional statements. Any statements that you do make can be
23 used against you.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: You have the right to be represented by a
2 lawyer today and at all future proceedings in this case. And
3 if you are unable to afford a lawyer, I will appoint a lawyer
4 for you.

5 Do you understand that?

6 DEFENDANT SCHWARTZ: Yes.

7 THE COURT: Are you being represented by Michael
8 Tremonte?

9 DEFENDANT SCHWARTZ: Yes.

10 THE COURT: Have you retained Mr. Tremonte to
11 represent you?

12 DEFENDANT SCHWARTZ: Yes.

13 THE COURT: Do you understand that if you could not
14 afford to retain counsel, I would appoint a lawyer for you free
15 of cost?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: But you don't want me to do that, you
18 don't need that, is that right?

19 DEFENDANT SCHWARTZ: I don't want you to, yes.

20 THE COURT: Have you seen a copy of the indictment
21 against you?

22 DEFENDANT SCHWARTZ: Yes, your Honor.

23 THE COURT: Have you discussed it with Mr. Tremonte?

24 DEFENDANT SCHWARTZ: Yes.

25 THE COURT: Do you want me to read the indictment

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1 aloud to you in open court or do you wish to waive the reading
2 of the indictment?

3 DEFENDANT SCHWARTZ: Waive it.

4 THE COURT: How do you plead to the charges against
5 you in the indictment, guilty or not guilty?

6 DEFENDANT SCHWARTZ: Not guilty.

7 THE COURT: Defendant's plea of not guilty will be
8 entered. Thank you.

9 With respect to Mr. Schwartz, I have a pretrial
10 services report that indicates that bail was set in California.
11 Are there any applications with respect to that bail package or
12 should the bail package just be continued?

13 MR. ALLEN: Your Honor, the government would ask that
14 the same bail be continued here.

15 MR. TREMONTE: The defense requests modification of
16 the -- I guess at this point it would be the imposition of a
17 set of conditions that is somewhat different from the
18 conditions that were set in California.

19 I wasn't present at that proceeding. Pretrial
20 services prepared a report at that time, which is attached to
21 the Southern District pretrial services report. Pretrial
22 services in Los Angeles recommended what looks like a personal
23 recognizance bond in the amount of \$20,000 without anything
24 other than standard conditions. And I don't know how things
25 unfolded there, and I don't know that Mr. Allen does either,

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1 but I think that in light of the circumstances here, and the
2 very, very powerful moral suasion case, which I will describe,
3 the \$500,000 bond, coupled with the lien against real property
4 is excessive, and we would request that all the conditions
5 remain the same, except that the requirement of the lien be
6 removed.

7 Mr. Schwartz has very substantial ties to this
8 community. He grew up on Long Island in Far Rockaway. His
9 mother lives --

10 THE COURT: Can I just ask you, the only thing you're
11 objecting to is the security for the bond?

12 MR. TREMONTE: That's correct.

13 THE COURT: The security currently is what?

14 MR. TREMONTE: It's a \$250,000 lien.

15 THE COURT: It's a \$500,000 bond and the security is
16 what?

17 MR. TREMONTE: A lien against Mr. Schwartz's primary
18 residence in the amount of \$250,000.

19 THE COURT: OK. What security do you suggest would be
20 sufficient?

21 MR. TREMONTE: A \$500,000 bond signed by the defendant
22 and one financially responsible adult.

23 THE COURT: What is the government's position?

24 MR. ALLEN: Your Honor, the defendant agreed to the
25 lien in California. We would ask that it be continued here.

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1 It has already been effected, is my understanding, and so I
2 don't think it's a tremendous imposition on the defendant to
3 continue the lien.

4 I also think it's appropriate for several reasons. As
5 indicated in the pretrial services report, the defendant has
6 traveled overseas on a significant number of occasions in the
7 past several years. The defendant has significant resources.
8 His house is worth between 1.8 to \$2 million. There is
9 \$800,000 in equity. He has a significant monthly income. And
10 charges of this offense include laundering significant amounts
11 of money, which total \$1.5 million. So he obviously has access
12 to large amounts of money.

13 A bond which is secured by only one person, who is his
14 son, it will, of course, have a restraining effect, but it
15 would have less of a restraining effect than if there were a
16 lien. Again, I don't think that it creates a tremendous burden
17 on the defendant, and it does ensure that he will travel from
18 California to New York for court appearances as required.

19 THE COURT: The only lien is against the defendant's
20 own residence?

21 MR. TREMONTE: The defendant's own residence, that's
22 correct.

23 THE COURT: What is the burden of the lien?

24 MR. TREMONTE: It's an encumbrance in the amount of,
25 approximately, a quarter of a million dollars on the home. The

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1 issue here is that although it's not, as the government
2 suggests, an especially burdensome additional imposition, it is
3 nevertheless a very significant financial sanction, which under
4 the circumstances, for the reasons I will present, is
5 completely unnecessary.

6 THE COURT: I will certainly listen to you. My
7 question really goes to the burden of the lien, \$250,000 on the
8 defendant's personal residence. Unless the defendant is
9 intending to sell the house, refinance the house, or do
10 something with the house, the only thing that the security does
11 is to provide security.

12 When I ask what is the value of the bail package to
13 assure the continuing presence of the defendant, it's actually
14 meaningless, except for the fact that it's secured by one
15 financially responsible person. What would be preventing the
16 defendant from fleeing? The moral suasion of one financially
17 responsible person against whom a judgment could be taken for
18 the size of the bond, and the government could go after any
19 assets that the defendant left behind. I didn't see in the
20 report, I saw current income.

21 MR. TREMONTE: The current income listed in the report
22 is approximately \$200,000 a year. What the report doesn't go
23 into is that Mr. Schwartz is financially responsible for a
24 number of other adults and dependent children. And he is also
25 responsible for the medical care of two terminally ill persons:

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1 The first of whom is his mother who resides in Far Rockaway, in
2 the home where Mr. Schwartz was raised; the second is his
3 sister, adult sister, who resides in Los Angeles.

4 Mr. Schwartz's mother and father resided in the Far
5 Rockaway home together until December of 2015 when Mr.
6 Schwartz's father passed away. Mr. Schwartz was principally
7 responsible for the care of his father. Just a week ago his
8 mother, the surviving spouse, was diagnosed with terminal
9 cancer. Mr. Schwartz is financially responsible for her and
10 principally responsible for her medical care. And when I say
11 principally responsible, it's not a euphemism; he is the only
12 one who is in a position to oversee and manage her care.

13 Also, when he is here in New York, which over the past
14 couple of years he has been here monthly, now he will likely be
15 here weekly, he resides in the family home, which he is a
16 one-sixth owner of as a beneficiary of a family trust.

17 In addition to being financially responsible for his
18 mother and his sister and for their care -- and I don't think I
19 mentioned his sister is also terminally ill. She is awaiting a
20 kidney transplant which Mr. Schwartz recently arranged. He is
21 also financially responsible for his brother, Steven Schwartz
22 who resides in Brooklyn, and he visits his brother at least
23 monthly.

24 He also has got three dependent children in his home:
25 One is a 15-year-old son who suffers from autism; the other

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1 older son who is 23 is in college, resides in Mr. Schwartz's
2 residence in California between semesters; and Mr. Schwartz
3 also has an adult son, 27 years old, who also resides with him
4 and who is dependent on him financially.

5 I think under these circumstances, number one, it is
6 certainly possible, if not likely, on this income that Mr.
7 Schwartz will end up seeking to refinance his principal
8 residence in Los Angeles. The \$200,000 is very unlikely to
9 cover both the expenses that he has got in connection with his
10 dependents -- his mother, his brother and his sister -- his
11 travel from the East Coast to West Coast, and now the legal
12 fees that he is going to incur in connection with defending
13 this action. I think under these circumstances, the moral
14 suasion case is very powerful, if not overwhelming, and I think
15 that the \$250,000 lien is really well beyond what is required
16 to ensure the defendant's presence here.

17 MR. ALLEN: Just very briefly.

18 THE COURT: Could I just make a couple of
19 observations?

20 I could certainly conceive of alternative bail
21 packages which might, for example, include increasing the
22 number of financially responsible persons who are on the
23 \$500,000 personal recognizance bond. It's also true that there
24 is no showing that the lien on the house has any current
25 problem in terms of burden. The bail package is always subject

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1 to reconsideration so that if it became necessary for the
2 defendant to refinance the house, and if the lien stayed, I
3 could reconsider the bail package at that time. But let me
4 listen to the government.

5 MR. ALLEN: Your Honor, you were wise to cut me off
6 because I was just going to say the same thing that you had
7 said, which is that to the extent the defendant needs to
8 refinance his house, we can consider whether it's appropriate
9 to rescind the lien at that time. But now, without the lien, I
10 think the bond is not particularly strong. It's, in essence, a
11 bond which admittedly is a large amount, but it's only cosigned
12 by one financially responsible person. I think it makes sense
13 with a lien, and without I don't think it's appropriate given
14 the facts of the case.

15 MR. TREMONTE: If I may suggest, I think I am certain
16 we can find at least another two financially responsible
17 persons to sign on to the bond within a matter of days.

18 THE COURT: Let me suggest that you have some
19 conversations with the government about increasing the number
20 of financially responsible persons, and I am always here to
21 reconsider the bond. So at this point I will leave the bond as
22 it is, and if you want to propose an alternative package, I am
23 certainly available.

24 MR. TREMONTE: Thank you, your Honor.

25 THE COURT: So the bail package will stay as it is at

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1 the moment. Of course, it's without prejudice to an
2 application to change it.

3 Yes, Mr. Bachner.

4 MR. BACHNER: Good evening, your Honor.

5 Your Honor, at this point, we are not going to be
6 making any applications to modify the bail, although we may
7 come to your Court's attention later. But there is one
8 modification on consent, and that is that Mr. Rimberg's travel
9 restrictions, which are presently to the Eastern and Southern
10 District of New York, and I think New Jersey, be expanded to
11 domestic travel. Mr. Rimberg does do a lot of domestic travel,
12 and while generally there is never a problem with it, there is
13 a lot of letter writing that has to go along with that. Mr.
14 Rimberg has posted a substantial bail package presently secured
15 by his home.

16 THE COURT: It's on consent?

17 MR. ALLEN: Yes, your Honor.

18 THE COURT: So Mr. Rimberg's travel conditions under
19 the bail are extended to the continental United States.

20 Government, tell me about the case.

21 MR. ALLEN: The allegations in this case are the two
22 defendants, with several co-conspirators, participated in a
23 money laundering conspiracy. The conspiracy began in late 2009
24 with the creation of a hedge fund that was planned to be used
25 to launder money by a Colombian drug trafficker. That hedge

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1 fund was never actually used, but after its creation, it was
2 actually incorporated, the defendant laundered money in three
3 transactions: A \$200,000 transaction, a \$300,000 transaction,
4 and, finally, a \$1 million transaction.

5 There were three months of wiretaps on the
6 co-conspirator that were between November and January of 2010
7 and 2011. There were e-mail search warrants at the time, and
8 there were a series of consensually recorded meetings that
9 occurred in late 2010 and at various times continuing up
10 through the present.

11 So that is the basis of the allegations and, of
12 course, I can go into greater detail if the Court would like.

13 THE COURT: What is the current status of producing
14 discovery to the defendants?

15 MR. ALLEN: We have made one production of discovery
16 at this time, which was made available to defendants on January
17 4. That production included, basically, affidavits and orders
18 received by the government, which included pen registers, the
19 wiretap application orders, as well as the e-mail search
20 warrant, a location warrant, and transcripts of consensually
21 recorded meetings. It was approximately 2,000 pages of
22 discovery.

23 We anticipate and have gotten hard drives and a thumb
24 drive from the defendants, which will enable us to produce the
25 actual recordings from the wiretaps, as well as the other

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1 materials in this case. There are approximately 5,300
2 intercepted calls that have recordings, in other words,
3 intercepted calls that did not just result in a hang-up. 610
4 of those were pertinent. There are around 3700 intercepted
5 text messages of which 72 are pertinent. There are a number of
6 recordings from meetings, both video and audio. And there was
7 a recorded post-arrest statement from one of the two
8 defendants.

9 So overall, I think the discovery is quite voluminous.
10 We have made a first production. I anticipate producing the
11 remainder within the next 14 days, although, as is often the
12 case, there will likely be things that come up in the couple of
13 weeks that follow.

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1 THE COURT: Thank you.

2 What I would normally do, the government says that
3 subject to underwritings coming up, they estimate the bulk of
4 discovery within two weeks. I would set the case down for
5 another conference after the defense has had an opportunity to
6 review the discovery and to determine what motions, if any, the
7 defense intends to make, and I would think that I should set it
8 down for sometime after the end of February, sometime in March
9 perhaps.

10 If the parties think that is enough time and that is a
11 reasonable schedule, March 1 at 4:30, is that good for
12 everyone?

13 MR. TREMONTE: Yes, your Honor.

14 MR. BACHNER: Yes, your Honor.

15 MR. ALLEN: Yes, your Honor.

16 THE COURT: Another conference March 1 at 4:30. I
17 will exclude prospectively the time from today until March 1,
18 2016, from speedy trial calculations. The continuance is
19 designed to ensure effective assistance of counsel, it is
20 designed to allow the defense to review discovery and to
21 determine what motions, if any, the defense intends to make.
22 The court finds that the ends of justice served by ordering the
23 continuance outweigh the best interest of the defendants and
24 the public in a speedy trial. This order of exclusion is made
25 pursuant to 18 U.S.C. 3161(h)(7)(A).

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1 What's the status of the speedy trial clock?

2 MR. ALLEN: Your Honor, Mr. Rimberg was presented
3 December 14, and time was excluded at that point until today.
4 There have been no days that have been burned with respect to
5 Mr. Rimberg.

6 Mr. Schwartz has not actually appeared in New York
7 until today. My understanding is that there would be no
8 movement on the speedy trial clock either.

9 THE COURT: In any event, there is only one speedy
10 trial clock. The government says no time off the speedy trial
11 clock.

12 Do the defendants know off the top of their heads
13 whether they agree with that? If not, the defendants send me a
14 letter if they have any position other than the government says
15 no time off the speedy trial clock. I always want to make sure
16 we're all on the same speedy trial clock.

17 So if defense counsel believes that there is any other
18 time that is off the speedy trial shock, write me a letter
19 within a week letting me know that there is an issue with
20 respect to the speedy trial clock.

21 MR. BACHNER: Yes, your Honor.

22 MR. TREMONTE: Yes, your Honor.

23 THE COURT: Anything else?

24 MR. ALLEN: Not from the government, Judge.

25 MR. TREMONTE: No, your Honor.

1 MR. BACHNER: No. Thank you, your Honor.

2 THE COURT: Good afternoon, all.

3 MR. ALLEN: Thank you, Judge.

4 MR. TREMONTE: Thank you, Judge.

5 (Adjourned)

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